

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

December 13, 2000

GSBCA 15257-RELO

In the Matter of TERRY S. JONES

Terry S. Jones, Kaiserslautern, Germany, Claimant.

Patrick T. Beckerle, Deputy Director for Army Finance, Defense Finance and Accounting Service, Europe Operating Location, appearing for Department of the Army.

WILLIAMS, Board Judge.

Claimant seeks reimbursement of \$3422.89, representing the cost of a second shipment of his household goods (HHG) in conjunction with a permanent change of station from Berlin, Germany, to Kaiserslautern, Germany. The agency denied reimbursement because the second move of HHG did not occur within a two-year period from his date of transfer. Claimant contends that he was never advised that he had to ship the second installment of his HHG within that time frame.

The agency is correct. Because the governing regulations do not provide for an extension of the two-year period for shipping HHG, the claim must be denied.

Background

On February 12, 1996, claimant, a civilian employee with the Department of the Army, was issued an authorization for a permanent change of station from Pirmasens, Germany, to Kaiserslautern, Germany. Claimant was authorized shipment and temporary storage of his HHG not to exceed 18,000 pounds. He was also authorized transportation of one dependent, his wife.

On June 10, 1998, claimant's February 12, 1996, authorization was amended to substitute Berlin, Germany, for Pirmasens and to note that the dependent's travel would be delayed and not concurrent with that of the employee. On the amended authorization, claimant's reporting date was not changed; it remained June 30, 1996.

Claimant moved the first installment of his HHG on September 27, 1996, within the two-year period and was reimbursed for this. However, claimant contends that he was not

counseled by the agency that he had to complete the move of the HHG within two years. Nor was claimant ever provided with a Personal Property Counseling Checklist, DD Form 1797. The agency contends that claimant "was clearly counseled . . . when he received the amendment, that all transportation movement must be completed by 30 June 1998, or the entitlement would be lost."

On June 10, 1998, claimant met with the Army civilian personnel officer to discuss the second move of his HHG from Berlin to Kaiserslautern. That same day claimant made an appointment for his move to occur on June 24, 1998. On June 24, however, he set a new move date for September 1998, and no one advised him that his move had to have been completed by the end of June 1998. Also on June 24, 1998, claimant signed a DOD Form 1299 entitled "Storage of Personal Property," with scheduled dates of pickup originally stated to be September 28 and 29, 1998. However, those dates were crossed out and the dates March 18 and 19, 1999, were penned in. In early September 1998, claimant's wife decided that she was unable to make a move in September due to her work schedule, so she requested a new move date in March 1999, and the Army personnel approved that new date--again without advising claimant that he had to have his move completed by June 1998.

The move was completed in March 1999. On September 24, 1999, claimant received a memorandum requesting a refund of charges for shipment of personal property in the amount of \$3407.89, representing the cost of the March 1999 shipment of HHG, plus a \$15 administrative fee, for a total of \$3422.89. The memorandum advised claimant that in order for the Government to pay for the transportation of his HHG such transportation had to occur within two years after the effective date of his transfer, here on or before June 30, 1998.

Discussion

As a civilian employee of the Department of Defense, Mr. Jones is subject to the provisions of the Joint Travel Regulations (JTR). These regulations state:

All travel, including that for dependents, and transportation, including that for HHG allowed under these regulations, should be accomplished as soon as possible. Allowable travel and transportation must begin within 2 years from the effective date of an employee's transfer or appointment except that:

1. the 2-year period is exclusive of time spent on furlough for an employee who begins active military service before the expiration of such period
2. the 2-year period doesn't include any time during which travel and transportation isn't feasible due to shipping restrictions for an employee who is transferred or appointed to or from an OCONUS PDS [outside the continental United States permanent duty station]; and
3. the 2-year period is extended for an additional period of time up to 1 year when the 2-year time limitation for completion of residence transactions is extended under par. C 14000-2.

JTR C1057.¹

Clearly, the first exception set out above is inapplicable to Mr. Jones since he is not an employee on active military service. Nor is the second exception applicable. Although Mr. Jones was transferred between duty stations in Germany, there is no showing that any shipping restrictions rendered completion of his move infeasible within two years. Rather, the second move was delayed solely due to claimant's personal circumstances, i.e., his wife's employment, thus making the second exception inapplicable. Mr. Jones is likewise not covered by the third exception, since there is no indication in the record that any real estate transactions warranted an extension.

The Board addressed a similar situation in James F. Meyer, GSBCA 14939-RELO, 99-2 BCA ¶ 30,490, and concluded that it could not grant an extension of the two-year period for completing transportation of HHG where none of the exceptions in the JTR applied. The Board explained:

We are left, therefore, with the hard fact that the JTR, which govern in this case, simply make no provision for an extension of the two-year period for the completion of [claimant's] authorized relocation. In the absence of an exception to the general rule set out in the regulations, the request must be denied. This is the conclusion reached by his agency. The decision is correct, for neither the agency nor this Board has the authority to waive the applicability of the regulation. It is well established that, absent a specific provision in statute or regulation which might permit it under certain circumstances, neither an agency nor the Board has the authority to waive the applicability of travel statutes or regulations for any individual federal employee who is subject to them.

Meyer, 99-2 BCA at 150,603 (citations omitted).

As in Meyer, we lack the authority to grant claimant an extension of the two-year period.

Decision

The agency determination is affirmed, and Mr. Jones' request is denied.

MARY ELLEN COSTER WILLIAMS
Board Judge

¹A similar provision appears in the Federal Travel Regulation (FTR), 41 CFR 306-1.6 (1997).

